

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

YONG XU, *on his own behalf and on behalf of others  
similarly situated*,

Plaintiff,

-v-

KEALOHA SUSHI INC. et al.,

Defendants.

19 Civ. 11885 (PAE)

ORDER OF DEFAULT  
JUDGMENT

PAUL A. ENGELMAYER, District Judge:

On December 30, 2019, plaintiff Yong Xu filed the complaint on behalf of a putative class alleging claims under the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.* and New York Labor Law (“NYLL”), N.Y. Lab. Law § 605 *et seq.* Dkt. 1. The same day, this Court referred the case to Magistrate Judge Aaron for pretrial management. Dkt. 7. On January 21, 2020, plaintiff served the complaint on all defendants. Dkts. 8–13. Service for each defendant, including the John Doe defendants, was accepted by a manager of Kealoha Sushi Inc. *Id.*

On February 27, 2020, Judge Aaron held a pretrial conference during which only the plaintiff appeared. Dkt. 16. Judge Aaron ordered that, if defendants had not appeared by March 30, 2020, plaintiff should seek one or more Certificates of Default from the Clerk of Court. *Id.* Defendants did not appear. Judge Aaron held a second conference, during which only the plaintiff appeared. Dkt. 17. Plaintiff obtained Certificates of Default against all defendants. Dkts. 28–33.

On June 18, 2020, plaintiff filed a request for an extension of time to file an amended complaint reflecting the true identities of the defendants, which Judge Aaron granted. Dkts. 35–36. On July 3, 2020, plaintiff filed the first amended complaint. Dkt. 37. On September 2,

2020, plaintiff served the first amended complaint on all defendants. Dkts. 40–43. Service was accepted by defendant Song Chen. *Id.* Defendants did not appear.

On October 13, 2020, plaintiff obtained Certificates of Default as to the defendants named in the first amended complaint. Dkts. 56–59. Judge Aaron ordered plaintiff to file any motion for a default judgment by November 4, 2020. Dkt. 60. On November 4, 2020, pursuant to this Court’s Individual Rules of Practice, plaintiff filed a motion for a default judgment, a memorandum of law in support of the motion, and a supporting declaration. Dkts. 61–63. On the same day, plaintiff filed a motion for attorneys’ fees and costs, memorandum of law in support of the motion, and a supporting declaration. Dkts. 64–66.

On November 6, 2020, the Court issued an order to show cause ordering defendants to appear and oppose the motions for a default judgment and attorneys’ fees by December 3, 2020. Dkt. 67. On November 10, 2020, plaintiff served defendants, by first class mail, plaintiff’s motions for a default judgment and attorneys’ fees and supporting documents and the Court’s order to show cause. Dkts. 68.

The Court has reviewed plaintiff’s motion for a default judgment pursuant to Federal Rule of Civil Procedure 55(b), Dkt. 61, memorandum of law, Dkt. 63, and supporting declaration, Dkt. 62. Because proof of service has been filed, defendants have not answered the complaint, the time for answering the complaint has expired, and defendants failed to appear to contest entry of a default judgment for that purpose, the Court enters a default judgment for plaintiff against the defendants.

The Court, by separate order, has commissioned an inquest into damages and referred plaintiff’s motion for attorneys’ fees and costs to Judge Aaron for a report and recommendation.

The Court respectfully directs the Clerk of the Court to terminate the motion pending at docket 61.

SO ORDERED.



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Paul A. Engelmayer  
United States District Judge

Dated: May 4, 2021  
New York, New York